

Sixth Appellate District

San Jose, California

MONDAY, APRIL 13, 2009

(no minute approved orders)

TUESDAY, APRIL 14, 2009

The Court met in its courtroom at 333 West Santa Clara Street, Suite 1060, San Jose, California. Present: Rushing, P.J.; Premo, J.; Elia, J.; and S. Nasson, Deputy Clerk.

H032308 PEOPLE v. HERNANDEZ

Cause called and argued by Joseph Shevelson appearing for Appellant and by Dorian Jung, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H032977 PEOPLE v. KARIM F.

Cause called and argued by Alex Coolman appearing for Appellant and by Dorian Jung, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H033050 PEOPLE v. GARDEA

Cause called and argued by Amy Haddix, Deputy Attorney General, appearing for Appellant and by Jonathan Berger appearing for Respondent. Cause ordered submitted.

H032482 FALCONE v. FYKE

H032396 FALCONE v. FYKE

Cause called and argued by appellant Kathey Fyke appearing in propria persona and by Bernard Wolf appearing for Respondent. Cause ordered submitted.

Court adjourns.

H032340 PEOPLE v. PAGAN

The judgment is reversed. The trial court is directed to strike the kidnapping findings under section 667.61 and the re-sentence defendant on both counts. The court shall amend the abstract of judgment accordingly and forward a copy to the Department of Corrections. (not published)

(Elia, J.; We concur: Rushing, P.J., Premo, J.)

Filed April 14, 2009

Sixth Appellate District

San Jose, California

WEDNESDAY, APRIL 15, 2009

H033388 PEOPLE v. O. D.

The trial court's disposition order is affirmed. (not published)

(McAdams, J.; We concur: Bamattre-Manoukian, Acting P.J., Duffy, J.)

Filed April 15, 2009

THURSDAY, APRIL 16, 2009

The following cases are submitted this date:

H033581 PEOPLE v. LAUTAHA

H033345 PEOPLE v. ALONZO

H033016 PEOPLE v. BACHMEIER

H032902 BLOXHAM v. BECK

H032904 BLOXHAM v. BECK

H032903 PEOPLE v. LE

H033449 PEOPLE v. M.G.

H033407 In re J.F.; D.F.C.S. v. R.F.

The Court met in its courtroom at 333 West Santa Clara Street, Suite 1060, San Jose, California. Present: Rushing, P.J.; Premo, J.; Mihara, J.; and Jane Valdez Flor, Deputy Clerk.

H030193 PEOPLE v. MORALES

Cause called and argued by Stephen Greenberg appearing for Appellant and by Sharon R. Wooden, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

Rushing, P.J. and Premo, J. leave the bench and Bamattre-Manoukian, J. and Duffy, J. take the bench.

H031330 MONTEREY VISTA MOBILE ESTATES HOMEOWNERS' ASSOCIATION v. BYBEE, et al.

Cause called and argued by Mark Daniel Hudak appearing for Appellants and by Frederick H. Ebey appearing for Respondent. Cause ordered submitted.

Mihara, J. leaves the bench and McAdams, J. takes the bench.

H032722 PEOPLE v. HERRERA

Sixth Appellate District

San Jose, California

Cause called and argued by Jill A. Fordyce appearing for Appellant and by Sharon R. Wooden, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

Bamattre-Manoukian, J. leaves the bench and Mihara, J. takes the bench.

Sixth Appellate District

San Jose, California

Thursday, April 16, 2009 (continued)

H032567 MORGADO FOUR CONSTRUCTION, INC. v. SUPERIOR COURT OF SANTA CRUZ COUNTY; WELLS FARGO BANK, N.A., et al.

Cause called and argued by Paul J. Derania appearing for Petitioner and by Glenn Harlan Wechsler appearing for Real Parties in Interest. Cause ordered submitted.

Court is adjourned.

H032219 PEOPLE v. NEWTON

By the Court:

Appellant's request to vacate submission and file late request for oral argument is granted. The submission order filed April 3, 2009 is hereby vacated. The cause will be resubmitted at oral argument to be set at a date and time to be determined.

Dated: April 16, 2009

Rushing, P.J.

FRIDAY, APRIL 17, 2009

H033303 PEOPLE v. LAW

The judgment is affirmed. (not published)  
(Premo, J.; We concur: Rushing, P.J., Elia, J.)  
Filed April 17, 2009

H032426 CRISCIONE on Habeas Corpus

The matter is remanded to the superior court with directions to modify its order granting Criscione's petition for habeas corpus. The superior court shall strike all but the first paragraph of its order and insert the following: "The Board of Parole Hearings is directed to vacate its 2004 parole decision and to hold a new hearing and issue a new decision within 60 days of this order. The Board shall proceed in accordance with due process in light of *In re Lawrence* (2008) 44 Cal.4<sup>th</sup> 1181 and *In re Shaputis* (2008) 44 Cal.4<sup>th</sup> 1241, taking into account all relevant regulating factors. The Board, in its discretion, may consolidate this 2004 parole review matter with the 2007 parole review and conduct a single rehearing." (See *In re Criscione* H032680, filed concurrently herewith.) (not published)

(Premo, J.; We concur: Rushing, P.J., Elia, J.)  
Filed April 17, 2009

Sixth Appellate District

San Jose, California

Friday, April 17, 2009 (continued)

H033006 MEDINA v. MEDINA; DEPARTMENT OF CHILD SUPPORT SERVICES

The trial court's order is reversed. The matter is remanded with instructions that the court enter an order under section 4911 that the 1994 Colorado order is the controlling order. (not published)

(Duffy, J.; We concur: Bamattre-Manoukian, Acting P.J., Mihara, J.)

Filed April 17, 2009

H033463 PEOPLE v. ADAMS

The judgment is affirmed. (not published)

(Duffy, J.; We concur: Bamattre-Manoukian, Acting P.J., McAdams, J.)

Filed April 17, 2009

H032686 NGUYEN v. KSJX-AM 1500 et al.

The order denying defendants' special motion to strike is reversed and the matter is remanded to the trial court so that the court may determine whether Nguyen can meet his burden of showing a probability of prevailing on his lawsuit. Costs on appeal are awarded to defendants. (not published)

(Mihara, J.; We concur: Premo, Acting P.J., McAdams, J.)

Filed April 17, 2009

H033404 PEOPLE v. GATES

The judgment is affirmed. (not published)

(McAdams, J.; We concur: Bamattre-Manoukian, Acting P.J., Duffy, J.)

Filed April 17, 2009

## Sixth Appellate District

San Jose, California

Friday, April 17, 2009 (continued)

H032680 ARTHUR SAM CRISCIONE on Habeas Corpus

The matter is remanded to the superior court with directions to modify its order granting petitioner, Arthur Criscione's petition for habeas corpus. The superior court shall strike all but the first paragraph of its order and insert the following:

"The Board of Parole Hearings is directed to vacate its 2007 parole decision and to hold a new hearing and issue a new decision within 60 days of this order. The Board shall proceed in accordance with due process in light of *In re Lawrence* (2008) 44 Cal.4<sup>th</sup> 1181 and *In re Shaputis* (2008) 44 Cal.4<sup>th</sup> 1241, taking into account all relevant statutory factors. "The Board is further directed that: "(1) It shall articulate a rational nexus between its factual findings and a conclusion that petitioner is not suitable for parole. "(2) Petitioner's parole plans, as proffered at the 2007 parole hearing, are realistic and do not support a determination that he would be dangerous if released. Unless there is new evidence pertaining to this factor (Cal. Code Reg., tit. 15, § 2402, subd. (d)(8)) the Board may not rely upon petitioner's parole plans as grounds for denying parole. "(3) The Board, in its discretion, may consolidate this 2007 parole review matter with the 2004 parole review and conduct a single rehearing." (See *In re Criscione* H032426 [nonpub. opn.] filed concurrently herewith.) As modified, the order is affirmed.

(published)

(Premo, J.; We concur: Rushing, P.J., Elia, J.)

Filed April 17, 2009